FILED MELINDA HAAG (CABN 132612) 1 United States Attorney 2 JOANN M. SWANSON (CSBN 88143) APR 07 2011 Chief, Civil Division 3 RICHARD W. WIEKING STEVEN J. SALTIEL (CSBN 202292) CLERK, U.S. DISTRICT COURT 4 NORTHERN DISTRICT OF CALIFORNIA Assistant United States Attorney 5 450 Golden Gate Avenue, Box 36055 San Francisco, California 94102-3495 6 Telephone: (415) 436-6996 FAX: (415) 436-6748 7 steven.saltiel@usdoj.gov 8 Attorneys for United States if America 9 UNITED STATES DISTRICT COURT 10 NORTHERN DISTRICT OF CALIFORNIA 11 EUREKA DIVISION 12 13 No. C 10-0313-NJV UNITED STATES OF AMERICA ex rel. 14 JOEI LYN HARRISON and SANDI ELAN UNITED STATES' NOTICE OF BYRNE. **ELECTION TO DECLINE** 15 INTERVENTION; PROPOSED Plaintiffs, ORDER 16 FILED UNDER SEAL 17 CITY OF CRESCENT CITY: ELI NAFFAH; MIKE YOUNG; JIM BARNTS; 18 STOVER ENGINEERING; WARD STOVER; WAHLUND 19 CONSTRUCTION/SEQUOIA CONSTRUCTION/O & M INDUSTRIES; 20 KEN WAHLUND, and DOES 1 through 100, And Each of Them, Inclusive, 21 Defendants. 22 23 Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States hereby 24 notifies the Court of its decision not to intervene in this action. 25 Although the United States declines to intervene, we respectfully refer the Court to 31 U.S.C. 26 § 3730(b)(1), which allows a relator to bring an action in the name of the United States; 27 providing, however, that the "action may be dismissed only if the court and the Attorney General 28 NOTICE OF ELECTION TO DECLINE INTERVENTION; [PROPOSED] ORDER Case No. C 10-0313 NJV

give written consent to the dismissal and their reasons for consenting." Id. The United States 1 Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United 2 States only has the right to a hearing when it objects to a settlement or dismissal of the action. 3 U.S. ex rel. Green v. Northrop Corp., 59 F.3d 953, 959 (9th Cir. 1995); U.S. ex rel. Killingsworth 4 v. Northrop Corp., 25 F.3d 715, 723-25 (9th Cir. 1994). 5 Therefore, the United States requests that, should either the relators or the defendants propose 6 7 that this action be dismissed, settled, or otherwise discontinued, this Court provide the United States with notice and an opportunity to be heard before ruling or granting its approval. 8 9 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action be served upon the United States. The United States also requests that orders 10 issued by the Court be sent to the Government's counsel. The United States reserves its rights to 11 order any deposition transcripts, and to intervene in this action, for good cause, at a later date. 12 The United States also reserves its right to move to dismiss the action pursuant to 31 U.S.C. § 13 14 3730(c)(2)(A). 15 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action be served upon the United States. The United States also requests that orders 16 issued by the Court be sent to the Government's counsel. The United States reserves its rights to 17 order any deposition transcripts, and to intervene in this action, for good cause, at a later date. 18 19 The United States also reserves its right to move to dismiss the action pursuant to 31 U.S.C. § 20 3730(c)(2)(A). Finally, the United States requests that the applications and stipulations filed by the United 21 22 States with the Court during the seal period remain under seal and not be made public or served upon the defendant. 23 \parallel 24 25 \parallel 26 27 \parallel 28 \parallel

A proposed order accompanies this notice.

DATED: March 28, 2010

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Respectfully submitted,

MELINDA HAAG United States Attorney

SZEVEN J. SALTIEL

Assistant United States Attorney

PROPOSED ORDER

- 1. All sealed contents of the Court's file in this action shall remain under seal and not be made public or served upon the defendant, except for the Complaint, this Order, and the accompanying United States' Notice of Election to Decline Intervention, which are hereby unsealed.
- 2. Unless the relators voluntarily dismiss this action pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, they shall serve the Complaint, this Order and the accompanying Notice of Election to Decline Intervention upon the defendant.
 - 3. The seal is lifted as to all matters occurring in this action after the date of this Order.
- 4. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time.
 - 5. All orders of this Court shall be sent to the United States.
- 6. Should the relators or the defendants propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

IT IS SO ORDERED.

DATED.

4/5/11

HON. NANDOR J. VADAS United States District Judge

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

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UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION; [PROPOSED] ORDER

United States of America ex rel, Joei Lyn Harrison and Sandi Elan Byrne, v. City f Crescent City, et al.

C 10-0313 NJV (Under Seal)

10 to be served this date upon each of the persons indicated below at the address shown:

Abraham N. Goldman, Esq.
David Springfield, Esq.
ABRAHAM N. GOLDMAN & ASSOCIATES, LTD.

P.O. Box 120/1286 Rices Crossing Rd. Oregon House, California 95962-0120

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BY FIRST CLASS MAIL by placing a true copy thereof in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

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CERTIFIED MAIL (#) by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

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BY PERSONAL SERVICE (BY MESSENGER): I caused such envelope to be delivered by hand to the person or offices of each addressee above.

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BY FACSIMILE (FAX): I caused each such document to be sent by facsimile to the person or offices of each addressee above.

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BY E-MAIL: I caused each such document to be sent by e-mail to the person or offices of each address above.

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BY FEDERAL EXPRESS

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed March 28, 2011 at San Francisco, California.

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Legal Assistant

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